

Amendment No. 2 to HB0049

Sargent  
Signature of Sponsor

**AMEND Senate Bill No. 529**

**House Bill No. 49\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 63-7-123(b)(2), is amended by deleting the subdivision and substituting instead the following:

(2)

(A) The nurse practitioner who holds a certificate of fitness shall be authorized to prescribe and/or issue controlled substances listed in Schedules II, III, IV and V of title 39, chapter 17, part 4 upon joint adoption of physician supervisory rules concerning controlled substances pursuant to subsection (d).

(B) Notwithstanding subdivision (b)(2)(A), a nurse practitioner shall not prescribe schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication.

(C) A nurse practitioner who had been issued a certificate of fitness may only prescribe or issue a schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment unless specifically approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication. This subdivision (C) shall not apply to prescriptions issued in a hospital or a nursing home licensed under title 68.

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SECTION 2. Tennessee Code Annotated, Section 63-19-107(2)(B), is amended by deleting the subdivision and by substituting instead the following:

(B)

(i) A physician assistant to whom the authority to prescribe legend drugs and controlled substances has been delegated by the supervising physician shall file a notice with the committee containing the name of the physician assistant, the name of the licensed physician having supervision, control and responsibility for prescriptive services rendered by the physician assistant and a copy of the formulary describing the categories of legend drugs and controlled substances to be prescribed and/or issued, by the physician assistant. The physician assistant shall be responsible for updating this information;

(ii) Notwithstanding any other rule or law, a physician assistant shall not prescribe Schedules II, III and IV controlled substances unless such prescription is specifically authorized by the formulary or expressly approved after consultation with the supervising physician before the initial issuance of the prescription or dispensing of the medication;

(iii) Any physician assistant to whom the authority to prescribe controlled drugs has been delegated by the supervising physician may only prescribe or issue a schedule II or III opioid listed on the formulary for a maximum of a non-refillable, thirty-day course of treatment, unless specifically approved after consultation with the supervising physician before the initial issuance of the

prescription or dispensing of the medication. This subdivision (iii) shall not apply to prescriptions issued in a hospital or a nursing home licensed under title 68;

SECTION 3. Tennessee Code Annotated, Title 63, is amended by adding the following as a new section to be appropriately designated:

(a) No later than July 31, 2013 and at least annually thereafter but more often at the discretion of the commissioner, the department of health shall:

(1) Identify the top fifty (50) prescribers who have unique DEA numbers of controlled substances in the previous calendar year, or if implemented more frequently for the relevant time period as determined by the department, from the data available in the controlled substances database established pursuant to title 53, chapter 10, part 3; and

(2) Send a letter through registered mail to each prescriber identified in subdivision (1), and to the physician supervisor as found on the provider's profile established in title 63, chapter 51 of each advanced practice nurse and each physician assistant identified in subdivision (1) that notifies the prescribers and, where appropriate, the supervising physician that the prescriber has been identified pursuant to subdivision (1) and includes the following information:

(A) The significant controlled substances prescribed by the prescriber;

(B) The number of patients prescribed these controlled substances by the prescriber;

(C) The total milligrams in morphine equivalents of controlled substances prescribed during the relevant period of time; and

(D) Any other relevant information sought by the department.

(3) If there is an active investigation against the prescriber or, where appropriate the supervising physician, on the list of prescribers identified in (a)(1)

above, the department is authorized to withhold any communication required under this act until such time as charges are brought or the investigation is closed.

(b)

(1)

(A) At the discretion of the department, each prescriber and each supervising physician of an advanced practice nurse and physician assistant who appear on the top fifty (50) prescribers of controlled substances in the relevant period of time shall submit to the department within fifteen (15) business days through registered mail or electronic mail an explanation justifying the amounts of controlled substances prescribed in the relevant period of time by the prescriber demonstrating that these amounts were medically necessary for the patients treated and that, for advanced practice nurses and physician assistants, the supervising physician had reviewed and approved the prescribing amounts. The department shall consider the prescriber's specialty and the patients' ages to make a determination as to whether the explanation of the prescriber and, where appropriate the supervising physician, for the prescribing habits of the prescriber of controlled substances is justifiable.

(B) The department is authorized to develop a model form to assist the prescriber and where appropriate the supervising physician in completing the explanation required by this subsection (b).

(C) The department is authorized to contract with an expert reviewer to determine if the explanation is acceptable. Should charges ultimately be filed against the prescriber or, where appropriate the

supervising physician, any report of the expert reviewer shall be discoverable by the licensee.

(2) If the department is not satisfied with any explanation by the prescriber or where appropriate a supervising physician, it shall communicate via registered mail such concerns to the prescriber and, if appropriate, the supervising physician. The prescriber and, if appropriate, the supervising physician shall have fifteen (15) business days to attempt to rectify the department's stated concerns.

(3) If the department remains unsatisfied after receiving a justification pursuant to subdivision (2), the department may submit its concerns to the member of the controlled substance database committee who represents the board which has licensed the individual. This member shall have access to all of the documents pertaining to the concerns of the department and the expert reviewer. If that member also believes that the explanations which have been provided are not sufficient to justify the prescribing pattern of the prescriber, the concerns may be forwarded to the department's office of investigations. Investigations are conducted by the entity responsible for licensure of that prescriber.

(c) All data, reports and correspondence under this section shall be confidential and shall not be considered to be a public record for purposes of title 10, chapter 7.

(d) All correspondence and reports can be used by the department's office of investigations and/or the respective entity responsible for licensure to develop a disciplinary case against the prescriber and, where appropriate, the supervising physician of an advanced practice nurse or physician assistant.

(e) The failure of a prescriber or, where appropriate, a supervising physician to respond to the department's request for information in a timely fashion may be a cause

for disciplinary action by the prescriber's, or where appropriate the supervising physician's, licensing board and may include a penalty of up to one thousand dollars (\$1,000) per day for failure to respond or failure to respond in a timely manner.

(f) All correspondence shall be maintained for five (5) years and kept organized by prescriber so that information on a prescriber who appears on multiple lists compiled pursuant to subsection (a) may be aggregated.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2013, the public welfare requiring it.